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Shannon Bowyer Hudson Counsel for ORS

October 30, 2009

VIA ELECTRONIC FILING

Charles L.A. Terreni, Esquire Chief Clerk/Administrator **Public Service Commission of South Carolina** 101 Executive Center Dr., Suite 100 Columbia, SC 29210

Re:

South Carolina Electric & Gas Company's Update of Construction Progress and Request for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base

Shama Bowy Hudson

Load Generation Facility at Jenkinsville, South Carolina

Docket No. 2009-293-E

Dear Mr. Terreni:

Attached please find the Stipulation reached today among the South Carolina Office of Regulatory Staff, South Carolina Energy Users Committee and South Carolina Electric & Gas Company.

Respectfully submitted,

Shannon Bowyer Hudson

SBH/pjm

cc: Parties of Record

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2009-293-E

OCTOBER30, 2009

| IN RE: | South Carolina Electric & Gas Company's Update of Construction Progress and Request for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina |) STIP | ULATION |
|--------|---|--------|---------|
| | South Carolina |) | |

This Stipulation is made by and among the South Carolina Office of Regulatory Staff ("ORS"); South Carolina Energy Users Committee ("SCEUC"); and South Carolina Electric & Gas Company ("SCE&G") (collectively referred to as the "Parties" or sometimes individually as a "Party").

WHEREAS, the Public Service Commission of South Carolina ("Commission") opened this docket to consider a request by SCE&G ("SCE&G's request") on July 20, 2009 to update and revise the nuclear facilities' ("the Units") construction schedule and capital cost schedule pursuant to S.C. Code Ann. § 58-33-270(E) set forth in the Base Load Review Act Order No. 2009-104(A) ("Order No. 2009-104(A)");

WHEREAS, S.C. Code Ann. § 58-33-270(E) states:

- (E) As circumstances warrant, the utility may petition the commission, with notice to the Office of Regulatory Staff, for an order modifying any of the schedules, estimates, findings, class allocation factors, rate designs, or conditions that form part of any base load review order issued under this section. The commission shall grant the relief requested if, after a hearing, the commission finds:
 - (1) as to the changes in the schedules, estimates, findings, or conditions, that the evidence of record justifies a finding that

- the changes are not the result of imprudence on the part of the utility; and
- (2) as to the changes in the class allocation factors or rate designs, that the evidence of record indicates the proposed class allocation factors or rate designs are just and reasonable.

WHEREAS, SCE&G made this request as a result of receiving an improved and refined construction schedule called the Performance Measurement Baseline Schedule ("PMBS") on April 1, 2009 from its contractors who will be constructing the Units;

WHEREAS, ORS has monitored and tracked SCE&G's request to update and revise the Units' construction schedule and capital cost schedule pursuant to §58-33-270(E) which fully support the facts and representation hereinafter set out.

WHEREAS, the improved and refined construction schedule does not alter the commercial operation dates of 2016 and 2019, respectively, for the Units;

WHEREAS, as a result of an updated construction schedule, the capital cost schedule is also updated to account for changes in timing and sequence of construction activities related to the Units;

WHEREAS, the updated capital cost schedule does not modify or alter the total cost forecast for the facilities as approved in Order No. 2009-104(A) in the amount of \$4,534,747,000 in 2007 dollars net of Allowance for Funds Used During Construction ("AFUDC").

WHEREAS, SCE&G is making no request to change class allocation factors or rate designs under S.C. Code Ann. § 58-33-270(E)(2);

WHEREAS, the Commission allowed for public comment and intervention in the abovecaptioned docket;

WHEREAS, SCEUC and Friends of the Earth ("FOE") made timely requests to intervene;

WHEREAS, SCE&G and ORS pre-filed testimony in this docket;

WHEREAS, no other testimony was filed:

WHEREAS, the Parties to this Stipulation are parties of record in the above-captioned docket. There are no other parties of record in the above-captioned proceeding except FOE;

WHEREAS, the Parties have engaged in discussions to determine if a Stipulation would be in their best interest;

WHEREAS, following these discussions the Parties have each determined that their interest and the public interest would be best served by agreeing to matters in the above-captioned case under the terms and conditions set forth below, and whereas SCEUC relies upon the review and monitoring by ORS:

- 1. The Parties agree to stipulate into the record before the Commission the direct testimony and exhibits of the following four (4) witnesses without objection, change, amendment or cross-examination with the exception of changes comparable to those which would be presented via an errata sheet or through a witness noting a correction.
 - (i) SCF&G witnesses:
 - Stephen A. Byrne
 - 2 Alan D. Torres
 - Carlette L. Walker
 - (ii) ORS witness:
 - Mark W. Crisp, P.E.
- 2. The Parties agree that no other evidence will be offered in the proceeding by the Parties other than the stipulated testimony and exhibits identified above. The Parties reserve the right to engage in redirect examination of witnesses as necessary to respond to issues raised by examination of their witnesses, if any, by non-Parties or by late-filed testimony by non-Parties.
- 3. The Parties acknowledge that, based upon the March 2009 Quarterly Report and the June 2009 Quarterly Report, the Units are being constructed in accordance with the construction schedules and cumulative cost forecasts as approved in Commission Order No.

- 2009-104(A). As of June 30, 2009, the project was on budget and SCE&G had spent a total of \$264,786,000 of capital.
- 4. As of the end of the second quarter of 2009, SCE&G asserts that its contractors had completed all required milestones as set forth in Exhibit E as adjusted pursuant to the milestone schedule contingencies approved by the Commission in Order No. 2009-104(A).
- 5. The Parties acknowledge that the PMBS has unbundled certain milestones as previously approved into several discrete items and now tracks the 123 milestones approved in Order No. 2009-104(A) as 146 milestones. In making these changes, no milestones have been omitted.
- 6. This updated schedule incorporates equipment procurement and delivery commitments negotiated with vendors and suppliers between May 2008 and the date of receipt, April 1, 2009, as well as provides a more detailed integration of site specific and non-site specific construction activities. The milestone dates contained in the PMBS are fully consistent with the guaranteed Substantial Completion dates for the Units of April 1, 2016 and January 1, 2019 and with the currently approved milestones and milestone contingencies.
- 7. The modifications to the approved construction schedule have resulted in some adjustments to the cash flow for the project due to the changes in timing and sequence of construction activities. The Parties agree that Exhibit F, as approved by the Commission in Order No. 2009-104(A), should be revised to account for these cash flow modifications. This updated capital cost schedule does not modify or alter the established cost forecast for the project as approved in Order No. 2009-104(A) of \$4,534,747,000 in 2007 dollars net of AFUDC. All of the capital costs currently reflected in the updated capital cost schedule are within the approved capital cost scheduling contingencies as set forth in Order No. 2009-104(A).

- 8. The Parties agree that the updated construction schedule and capital cost schedule are the result of refining and improving the timing and sequence of construction activities and are not the result of imprudence by SCE&G.
- 9. The Parties agree that the updated construction schedule and capital cost schedule should be approved by the Commission as the new schedules for Order No. 2009-104(A). Specifically, the revised construction schedule set forth in Exhibit 2 of SCE&G's request should replace Exhibit E in Order No. 2009-104(A), and the revised capital cost schedule set forth in Exhibit 3 of SCE&G's request should replace Exhibit F in Order No. 2009-104(A). SCE&G and ORS agree that by approving these updated schedules, the schedules will more closely align with construction and cash flow and allow for easier monitoring than the currently approved schedules.
- 10. The Parties acknowledge that an appeal of Order No. 2009-104(A) has been taken by SCEUC and is currently pending before the South Carolina Supreme Court. By entering into this Stipulation, SCEUC shall not be deemed to have waived any arguments, claims or positions made or raised in its appeal. The Parties further agree that this Stipulation will not be used by any Party as evidence or a basis of argument against the legal positions taken by SCEUC in its appeal, both in the proceedings before the Supreme Court or in any other proceedings. SCEUC does not object to the approval of the updated schedules as the updated schedules do not alter or affect the total project contingencies which are part of the basis of SCEUC's appeal.
- 11. The Parties agree this Stipulation is reasonable, in the public interest and in accordance with law and regulatory policy.
- 12. ORS is charged with the duty to represent the public interest of South Carolina pursuant to S.C. Code §58-4-10(B) (Supp. 2008). S.C. Code §58-4-10(B)(1) through (3) reads in part as follows:

"... 'public interest' means a balancing of the following

- (1) Concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) Economic development and job attraction and retention in South Carolina; and
- (3) Preservation of the financial integrity of the State's public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services."
- 13. The Parties agree to cooperate in good faith with one another in recommending to the Commission that this Stipulation be accepted and approved by the Commission as a fair, reasonable and full resolution in the above-captioned proceeding. The Parties agree to use reasonable efforts to defend and support any Commission order issued approving this Stipulation and the terms and conditions contained herein.
- 14. This written Stipulation contains the complete agreement of the Parties. There are no other terms and conditions to which the Parties have agreed. The Parties agree that this Stipulation will not constrain, inhibit or impair their arguments or positions held in future proceedings, nor will the Stipulation or any of the matters agreed to in it be used as evidence or precedent in any future proceeding. If the Commission should decline to approve the Stipulation in its entirety, then any Party desiring to do so may withdraw from the Stipulation without penalty.
- 15. This Stipulation shall be effective upon execution by the Parties and shall be interpreted according to South Carolina law. The above terms and conditions fully represent the agreement of the Parties hereto. Therefore, each Party acknowledges its consent and agreement to this Stipulation by affixing his or her signature or authorizing its counsel to affix his or her signature to this document where indicated below. Counsel's signature represents his or her representation that his or her client has authorized the execution of the agreement. Facsimile

signatures and e-mail signatures shall be as effective as original signatures to bind any party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Stipulation.

[Signatures on the following pages.]

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WE AGREE:

Representing and binding the South Carolina Office of Regulatory Staff

Shannon Bowyer Hudson, Esquire
South Carolina Office of Regulatory Staff

1401 Main Street, Suite 900

Columbia, SC 29201 Phone: (803) 737-0889 Fax: (803) 737-0895

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WE AGREE:

Representing and binding South Carolina Energy Users Committee

Scott Elliott, Esquire Elliott & Elliott, P.A.

721 Olive Street

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Phone: (803) 771-0555 Fax: (803) 771-8010

Email: selliott@elliottlaw.us

WE AGREE:

Representing and binding South Carolina Electric & Gas Company

Catherine D. Taylor Esquire

K. Chad Burgess, Esquire

South Carolina Electric & Gas Company

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BEFORE

THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA DOCKET NO. 2009-293-E

| IN RE: | South Carolina Electric & Gas Company's Update of Construction Progress and Request for Updates and Revisions to Schedules Related to the Construction of a Nuclear Base Load Generation Facility at Jenkinsville, South Carolina |))) | CERTIFICATE OF SERVICE |
|--------|---|-------|---------------------------|
| | |) | |

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **STIPULATION** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Belton T. Zeigler, Esquire Haynsworth Sinkler Boyd, PA Post Office Box 11509 Columbia, SC, 29211

K. Chad Burgess, Esquire South Carolina Electric & Gas Company MC C222 220 Operation Way Cayce, SC 29033-3701

> Robert Guild, Esquire 314 Pall Mall Street Columbia, SC 29201

Scott Elliott, Esquire Elliott & Elliott, P.A. 721 Olive Street Columbia, SC 29205

Tom Clements 1112 Florence Street Columbia, SC 29201

Pamela J. McMullan

October 30, 2009 Columbia, South Carolina